



The 2009 Form 5500: What You Need To Know

2009 Form 5500 Schedule C —What's New

The annual ritual of filing the Form 5500 is a familiar one for the hundreds of thousands of plan administrators charged with this responsibility. However, 2009 introduced sweeping change for the Form 5500, and everyone, from plan administrators to plan service providers, should take time to ensure the new requirements are understood.

This publication may help give you a head start by pulling together some of the significant guidance issued by the Department of Labor (DOL), including new Frequently Asked Questions (FAQs) About Electronic Filing, as well as the new FAQs on the revised and expanded Schedule C.

Both the content of the Form 5500 and its filing mechanism are significantly changed for plan year 2009. Perhaps the most obvious difference is that the Form 5500 may only be filed electronically through the new EFAST2 filing system. Though the new system is intended to be flexible, allowing several different types of electronic filing, plan administrators will need to take a number of new steps, such as registering for the appropriate “electronic credentials” from DOL. The new DOL FAQs About Electronic Filing help explain these logistical requirements.

Another major change likely requiring some discussions between plan administrators and plan service

providers is the expanded reporting of direct and indirect service provider compensation on the new Schedule C. The concept of indirect compensation in the new Schedule C is very different than in the past, and generally will require close attention from plan administrators, especially during this first year. The attached DOL FAQs on the Schedule C may help service providers and plan administrators understand how the new instructions apply to their particular arrangements.

While the DOL signals its enforcement efforts will take into account the difficulties inherent in the transition to the new Form 5500 and electronic filing system, plan administrators are well advised to begin planning now to ensure they and service providers are ready, and to seek legal counsel as necessary to ensure their compliance with the new rules.

Though filing the Form 5500 may not be the most exciting part of plan administration, it is important. The Form 5500 is the only comprehensive source of data about nearly one million employee benefit plans holding nearly \$5 trillion on behalf of more than 100 million American workers and their families. I hope you will find this publication useful during the filing season for plan year 2009. Thank you for all you do to provide for the benefit security of America's workers.



Bradford P. Campbell is a nationally recognized figure in employer-sponsored retirement, health and other welfare benefit plans. From 2006 to 2009, he served as the Assistant Secretary

of Labor for Employee Benefits, the head of the Employee Benefits Security Administration (EBSA). In this position, he was responsible for overseeing private-sector employee benefit plans covering more than 150 million Americans and holding as much as \$6 trillion in assets. As ERISA's former "top cop" and primary federal regulator, Mr. Campbell provides his clients at Schiff Hardin LLP with insight and knowledge across a broad range of ERISA-plan related issues.

Mr. Campbell held a number of other senior positions in the government, including Deputy Assistant Secretary of Labor for Employee Benefits, Senior Legislative Officer for the Department of Labor, and Senior Legislative Assistant for then-Congressman, later SEC Chairman, Christopher Cox. He received his JD, cum laude, from Georgetown, and his AB from Harvard.

A handwritten signature in black ink that reads "Bradford Campbell".

**The 2009 Form 5500
Schedule C**

SCHEDULE C (Form 5500) Department of the Treasury Internal Revenue Service Department of Labor Employee Benefits Security Administration Pension Benefit Guaranty Corporation	Service Provider Information This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA). ▶ File as an attachment to Form 5500.	OMB No. 1210-0110
		2009
		This Form is Open to Public Inspection.
For calendar plan year 2009 or fiscal plan year beginning _____ and ending _____		
A Name of plan	B Three-digit plan number (PN) ▶	
C Plan sponsor's name as shown on line 2a of Form 5500	D Employer Identification Number (EIN)	

Part I Service Provider Information (see instructions)

You must complete this Part, in accordance with the instructions, to report the information required for **each person** who received, directly or indirectly, \$5,000 or more in total compensation (i.e., money or anything else of monetary value) in connection with services rendered to the plan or the person's position with the plan during the plan year. If a person received **only** eligible indirect compensation for which the plan received the required disclosures, you are required to answer line 1 but are not required to include that person when completing the remainder of this Part.

1 Information on Persons Receiving Only Eligible Indirect Compensation

a Check "Yes" or "No" to indicate whether you are excluding a person from the remainder of this Part because they received only eligible indirect compensation for which the plan received the required disclosures (see instructions for definitions and conditions)..... ☐ Yes ☐ No

b If you answered line 1a "Yes," enter the name and EIN or address of each person providing the required disclosures for the service providers who received only eligible indirect compensation. Complete as many entries as needed (see instructions).

(b) Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

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2. Information on Other Service Providers Receiving Direct or Indirect Compensation. Except for those persons for whom you answered "yes" to line 1a above, complete as many entries as needed to list each person receiving, directly or indirectly, \$5,000 or more in total compensation (i.e., money or anything else of value) in connection with services rendered to the plan or their position with the plan during the plan year. (See instructions).

(a) Enter name and EIN or address (see instructions)

(b) Service Code(s)	(c) Relationship to employer, employee organization, or person known to be a party-in-interest	(d) Enter direct compensation paid by the plan. If none, enter -0-	(e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor)	(f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures?	(g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-	(h) Did the service provider give you a formula instead of an amount or estimated amount?
			Yes ☐ No ☐	Yes ☐ No ☐		Yes ☐ No ☐

(a) Enter name and EIN or address (see instructions)

(b) Service Code(s)	(c) Relationship to employer, employee organization, or person known to be a party-in-interest	(d) Enter direct compensation paid by the plan. If none, enter -0-	(e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor)	(f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures?	(g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-	(h) Did the service provider give you a formula instead of an amount or estimated amount?
			Yes ☐ No ☐	Yes ☐ No ☐		Yes ☐ No ☐

(a) Enter name and EIN or address (see instructions)

(b) Service Code(s)	(c) Relationship to employer, employee organization, or person known to be a party-in-interest	(d) Enter direct compensation paid by the plan. If none, enter -0-	(e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor)	(f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures?	(g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-	(h) Did the service provider give you a formula instead of an amount or estimated amount?
			Yes ☐ No ☐	Yes ☐ No ☐		Yes ☐ No ☐

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(a) Enter name and EIN or address (see instructions)

(b) Service Code(s)	(c) Relationship to employer, employee organization, or person known to be a party-in-interest	(d) Enter direct compensation paid by the plan. If none, enter -0-	(e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor)	(f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures?	(g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-	(h) Did the service provider give you a formula instead of an amount or estimated amount?
			Yes ☐ No ☐	Yes ☐ No ☐		Yes ☐ No ☐

(a) Enter name and EIN or address (see instructions)

(b) Service Code(s)	(c) Relationship to employer, employee organization, or person known to be a party-in-interest	(d) Enter direct compensation paid by the plan. If none, enter -0-	(e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor)	(f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures?	(g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-	(h) Did the service provider give you a formula instead of an amount or estimated amount?
			Yes ☐ No ☐	Yes ☐ No ☐		Yes ☐ No ☐

(a) Enter name and EIN or address (see instructions)

(b) Service Code(s)	(c) Relationship to employer, employee organization, or person known to be a party-in-interest	(d) Enter direct compensation paid by the plan. If none, enter -0-	(e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor)	(f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures?	(g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-	(h) Did the service provider give you a formula instead of an amount or estimated amount?
			Yes ☐ No ☐	Yes ☐ No ☐		Yes ☐ No ☐

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Page 5- ☐**Part 1 Service Provider Information (continued)**

3 If you reported on line 2 receipt of indirect compensation, other than eligible indirect compensation, by a service provider, and the service provider is a fiduciary or provides contract administrator, consulting, custodial, investment advisory, investment management, broker, or recordkeeping services, answer the following questions for (a) each source from whom the service provider received \$1,000 or more in indirect compensation and (b) each source for whom the service provider gave you a formula used to determine the indirect compensation instead of an amount or estimated amount of the indirect compensation. Complete as many entries as needed to report the required information for each source.

(a) Enter service provider name as it appears on line 1	(b) Service Codes (see instructions)	(c) Enter amount of indirect compensation
(d) Enter name and EIN (address) of source of indirect compensation	(e) Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation.	
(a) Enter service provider name as it appears on line 1	(b) Service Codes (see instructions)	(c) Enter amount of indirect compensation
(d) Enter name and EIN (address) of source of indirect compensation	(e) Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation.	
(a) Enter service provider name as it appears on line 1	(b) Service Codes (see instructions)	(c) Enter amount of indirect compensation
(d) Enter name and EIN (address) of source of indirect compensation	(e) Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation.	

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Page 7- ☐**Part III Termination Information on Accountants and Enrolled Actuaries (see instructions)**
(complete as many entries as needed)

a Name:	b EIN:
c Position:	e Telephone:
d Address:	

Explanation:

a Name:	b EIN:
c Position:	e Telephone:
d Address:	

Explanation:

a Name:	b EIN:
c Position:	e Telephone:
d Address:	

Explanation:

a Name:	b EIN:
c Position:	e Telephone:
d Address:	

Explanation:

a Name:	b EIN:
c Position:	e Telephone:
d Address:	

Explanation:

**Frequently Asked Questions About
The 2009 Form 5500 Schedule C**

FAQs About The 2009 Form 5500 Schedule C

1 What is the purpose of this FAQ guidance?

On November 16, 2007, the Department of Labor's Employee Benefits Security Administration (EBSA) published final form revisions and a final regulation, generally effective for plan years beginning on or after January 1, 2009, providing new requirements for reporting service provider fees and other compensation on the Schedule C of the 2009 Form 5500 Annual Return/Report of Employee Benefit Plan. The purpose of these FAQs is to provide guidance to plan administrators and service providers on complying with the requirements of the 2009 Form 5500 Schedule C. Questions concerning this guidance may be directed to EBSA's Office of Regulations and Interpretations at 202.693.8523.

2 Is the Schedule C information on service provider indirect compensation require to be reported based on the plan's year or can the information reported be based on the service provider's fiscal year?

Although direct compensation paid by the plan should be reported based on the plan's year, the amount or estimate of indirect compensation or the formula used to calculate indirect compensation may be based for Schedule C reporting purposes on a service provider's fiscal or other reporting year that ends with or within the plan year, as long as the selected method is used consistently from year to year. This is similar to the Schedule A rule that allows information on insurance contracts or policies (including fee and commission information) to be reported either on the basis of the plan year or the insurance contract or policy year that ends with or within the plan year.

3 Can the alternative reporting option for "eligible indirect compensation" be used to report compensation paid or received in separately managed investment accounts of a single plan?

Yes. The Schedule C instructions state that "eligible indirect compensation" includes fees or expense reimbursement payments charged to "investment funds" and reflected in the value of the plan's investment or return on investment. The instructions do not further define the term "investment fund" for this purpose. Investment funds would include mutual funds, bank common and collective trusts, and insurance company pooled separate accounts. In the Department's view, the term would also include separately managed investment accounts that contain assets of an individual plan. Thus, so long as the other conditions for eligible

indirect compensation are met, the Schedule C alternative reporting option can be used for indirect compensation received in connection with separately managed investment accounts of employee benefit plans.

4 Are all the fees and expenses charged against an investment fund and reflected in the value of the plan's investment, such as an investment fund's payments for legal services provided to the fund, fees paid to the fund's accountant, and expenses associated with SEC filing requirements, reportable indirect compensation for Schedule C purposes?

No. The Schedule C Instructions provide a general rule that indirect compensation includes compensation received in connection with services rendered to the plan or a person's position with the plan. A person will be considered to receive indirect compensation for Schedule C reporting purposes if "the person's eligibility for a payment or the amount of the payment is based, in whole or in part, on [1] services that were rendered to the plan or [2] on a transaction or series of transactions with the plan." In the case of charges against an investment fund, reportable "indirect compensation" includes, for example, the fund's investment adviser asset-based investment management fee from the fund, fees related to purchases and sales of interests in the fund (including 12b-1 fees), brokerage commissions and fees charged in connection with purchases and sales of interests in the fund, fees for providing services to plan investors or plan participants such as communication and other shareholder services, and fees relating to the administration of the employee benefit plan such as recordkeeping services, Form 5500 filing and other compliance services. Amounts charged against the fund for other ordinary operating expenses, such as attorneys' fees, accountants' fees, printers' fees, are not reportable indirect compensation for Schedule C purposes. Also, brokerage costs associated with a broker-dealer effecting securities transactions within the portfolio of a mutual fund or for the portfolio of an investment fund that holds "plan assets" for ERISA purposes, should be treated for Schedule C purposes as an operating expense of the investment fund not reportable indirect compensation paid to a plan service provider or in connection with a transaction with the plan.

5 Are the requirements to report indirect compensation on Schedule C different for participant-selected investments through "open brokerage" windows?

“Open brokerage windows” in self-directed 401(k) plans allow plan participants to invest in a wide range of funds, stocks, bonds and other investments offered through a designated broker for the brokerage window. Although the requirement to report indirect compensation applies to participant-selected investments from a range of investment alternatives under the plan, in the absence of any other guidance, Schedule C reporting can be limited to direct and indirect compensation received by the designated broker(s) and other brokerage window providers, transaction fees in connection with the purchase, sales, or exchanges made through the brokerage window, and any other plan-related fees. This limitation on reporting for Schedule C purposes does not relieve fiduciaries from obligations to prudently select and monitor designated brokers or other brokerage window providers in a brokerage window option under the plan.

6 Are commissions paid to an agent in connection with the sale of an investment, product, or service to a plan reportable indirect compensation?

Yes. Indirect compensation for Schedule C reporting purposes includes, among other things, payment of “finder’s fees” or other fees and commissions by a service provider to an independent agent or employee for a transaction or service involving the plan. Thus, commissions received from a person, other than those received directly from the plan or plan sponsor, in connection with the sale of an investment, product, or service to a plan would be reportable indirect compensation. The treatment of the commission as reportable indirect compensation is not dependent on whether the seller or the agent has any other relationship to the plan other than the sale itself.

7 Is compensation received in connection with the management and operation of venture capital operating companies (VCOCs), real estate operating companies (REOCs), and other operating companies reportable indirect compensation?

No. Although the requirement to report indirect compensation is not limited to fees received by persons managing plan assets, unlike investment funds (e.g., mutual funds, collective investment funds), fees received by third parties from operating companies, including real estate operating companies (REOC) or venture capital operating companies (VCOC), in connection with managing or operating the operating company, generally would not be reportable indirect compensation. Fees or commissions received by an investment manager or investment adviser in connection with a plan investment in a VCOC, REOC, or other operating company would, however, be reportable indirect compensation. This answer would not be affected by whether the VCOC, REOC, or other operating company were wholly owned

by a plan such that the assets of the entity would be deemed to be plan assets.

8 A mutual fund pays eligible indirect compensation to a fund administrator advisor, or distributor (a “fund agent”). In turn, the fund agent pays fees to the recordkeeper for “compliance services” provided to one or more participating plans, including discrimination testing, QDRO administration, and Form 5500 preparation. The recordkeeper is not an affiliate of the mutual fund or the fund agent. Is the mutual fund payment to the recordkeeper reportable indirect compensation? If it is reportable indirect compensation, is the fee received by the recordkeeper eligible indirect compensation?

Plan record keepers may receive fees for shareholder services and recordkeeping services directly or indirectly from investment providers under a wide variety of arrangements. Among others, they may receive compensation from fund agents (such as fund administrators, advisers or distributors) as well as other agents, representatives or intermediaries such as mutual fund “platform” providers, broker-dealers, banks, and insurance companies.

The fees for compliance services received by the recordkeeper from the mutual fund agent are reportable indirect compensation. The alternative reporting option for eligible indirect compensation would not apply to such payments because the payments are not among the categories listed in the Schedule C instructions for eligible indirect compensation. Instructions to Schedule C define “eligible indirect compensation” as “[i]ndirect compensation that is fees or expense reimbursement payments charged to investment funds and reflected in the value of the investment or return on investment of the participating plan or its participants[,] finders’ fees[,] ‘soft dollar’ revenue, float revenue, and/or brokerage commissions or other transaction-based fees for transactions or services involving the plan that were not paid directly by the plan or plan sponsor (whether or not they are capitalized as investment costs).”

Amounts received by a plan recordkeeper from fund agents would not constitute eligible indirect compensation on the basis of being “other transaction-based fees for transactions or services involving the plan” merely because the plan had to make an investment in the mutual fund before the recordkeeper would receive any fees. If such a broad interpretation of “transaction-based fees for transactions or services involving the plan” were adopted for purposes of the eligible indirect compensation definition, it would substantially undermine the bundled fee reporting option which requires “transaction based” fees to be reported separately from the bundle.

FAQs About The 2009 Form 5500 Schedule C (cont.)

- 9 A recordkeeper may enter into an “alliance” arrangement with a broker-dealer to provide services offered together as a “package” sold by agents of the broker-dealer. The recordkeeper and broker-dealer are not affiliated to one another and each has a separate contract or arrangement with the plan. In connection with this alliance arrangement, the broker-dealer pays compensation to the recordkeeper. The compensation may be flat per-participant fees or asset-based fees based on the value of plans’ investments in mutual funds or other investment vehicles offered to the plans by the broker-dealer. The broker-dealer pays the compensation for plan administration and recordkeeping services the recordkeeper provides to the broker-dealer’s plan clients. Is the compensation paid by the broker-dealer to the recordkeeper “eligible indirect compensation?”**

Unless the recordkeeper’s fees are charged to the investment fund and reflected in the value of the plan’s investment, the fees received by a recordkeeper would not constitute eligible indirect compensation regardless of whether the fund agent determines the recordkeeper’s compensation using an asset-based formula or a flat per participant fee.

- 10 A recordkeeper and an unaffiliated insurance company enter into an “alliance” arrangement similar to the alliance arrangement described in 9. Under this version of an alliance arrangement, an insurance company agent offers the plan investments through a group variable annuity or other insurance products and also introduces the recordkeeper’s service offering to prospective plan clients. The plan has a separate contract or arrangement with the insurance company and with the recordkeeper. The insurance company pays from its general assets compensation to the recordkeeper for plan administration and recordkeeping services the recordkeeper provides to plans with investments in insurance contracts issued by the insurance company, which may be flat per participant fees or asset-based fees based on the value of plans’ investments in the insurance contracts. Do the amounts paid to the recordkeeper by the insurance company constitute eligible indirect compensation?**

No. For the same reasons described above, the amounts paid by the insurer to the recordkeeper in connection with a plan’s investments do not constitute eligible indirect compensation. If the amount paid to the recordkeeper is reported on a Schedule A filed for the plan, and the recordkeeper did not receive any other

compensation reportable on the Schedule C, the amounts would not have to be reported again on the Schedule C.

- 11 Should float income on an account holding the assets of one plan be treated as direct or indirect compensation for Schedule C reporting purposes?**

Float income is specifically listed as a form of indirect compensation in the Schedule C instructions. The fact that the float revenue is received as “transaction float” or “check float” on the account of a single plan rather than at an omnibus account level would not require it to be treated as direct compensation for Schedule C reporting purposes.

- 12 Will disclosure of float income sufficient to satisfy the guidance in Field Assistance Bulletin 2002-03 meet the requirements of the alternative reporting option?**

Disclosure of float income sufficient to satisfy the guidance under Field Assistance Bulletin 2002-03 will generally be sufficient to satisfy the disclosure requirements for the Schedule C alternative reporting option. In order to satisfy the Schedule C alternative reporting option, the disclosure must disclose the existence of the indirect compensation, the amount (or estimate) or a description of the formula used to calculate or determine the compensation, an explanation of the reason for the payment of float income, and the parties paying and receiving the float income.

- 13 What rules govern the determination of the services or providers included in the scope of a bundled arrangement for purposes of Schedule C reporting?**

The instructions for Schedule C provide that for Schedule C reporting purposes, a bundled service arrangement includes any service arrangements where the plan hires one company to provide a range of services either directly from the company, through affiliates or subcontractors, or through a combination, which are priced to the plan as a single package rather than a service-by-service basis. The instructions further state that a bundled service arrangement would also include an investment transaction in which the plan receives a range of services either directly from the investment provider, through affiliates or subcontractors, or through a combination. As long as all the compensation required to be reported is identified on the Schedule C or disclosed in accordance with the rule for “eligible indirect compensation,” there is flexibility in determining what services or providers are included as part of a bundled arrangement.

14 What is an example of fees that are required to be broken out regardless of whether they are part of a “bundle?”

The Schedule C instructions include a general rule that, in the case of bundled service arrangements, revenue sharing within the bundled group generally does not need to be separately reported, with two exceptions.

The first exception is that any person in the bundle receiving separate fees charged against a plan’s investment (e.g., investment management fees, float revenue, and other asset-based fees, such as shareholder servicing fees, 12b-1 fees, and wrap fees if charged in addition to the investment management fee) must be treated as receiving separately reportable compensation for Schedule C purposes.

Examples of separate fees charged against a plan’s investment for purposes of this exception are revenue sharing payments for shareholder services, recordkeeping or compliance services that are paid by an investment provider to a third party administrator (“TPA”) if they are charged against the plan’s investment as a separate amount or pursuant to a separate formula. Thus, if the investment provider pays the TPA out of an overall investment management or shareholder services charge assessed against the plan’s investment the payment to the TPA by the investment manager out of its fees would not be a separate fee for this purpose.

The second exception is that compensation must be separately reported if (i) the compensation is received by any person in the bundle who is one of the service providers enumerated on Line 3 of Schedule C, and (ii) the compensation received is “commissions and other transaction based fees, finders’ fees, float revenue, soft dollars and other non-monetary compensation.”

15 Where the only compensation received by a service provider is “eligible indirect compensation” and all of the disclosures necessary to satisfy the alternative reporting option have been provided, is it necessary to complete any information on Schedule C regarding that service provider other than identifying the person providing the disclosures on Line 1?

No. The only information required when the alternative reporting option is being used with respect to a particular service provider is the identifying information on Line 1. However, for a service provider who receives \$5,000 or more in “eligible indirect compensation” and other reportable indirect compensation, the service provider must be separately listed on line 2 and “key” service provider information must be reported on line 3.

16 Does Part I, Line 3 of the Schedule C require reporting with respect to sources of indirect compensation if the compensation is “eligible indirect compensation?”

No. Line 3 of Part I of the Schedule C states that “If you reported on line 2 receipt of indirect compensation, other than eligible indirect compensation, by a service provider . . .” (emphasis added). This instruction makes it clear that the Line 3 reporting only is required for indirect compensation that is not eligible indirect compensation. For example, if a service provider receives both eligible indirect compensation (including satisfaction of the disclosure requirements) and other indirect compensation, Line 3 reporting only applies with respect to the portion of the service provider’s compensation that does not constitute eligible indirect compensation.

17 If a service provider receives eligible indirect compensation (for which the disclosures have been made) and either direct compensation or indirect compensation that is not eligible, does Line 2(h) of Part I apply to the portion that is eligible indirect compensation?

No. Line 2(h) is a follow up question to line 2(g), and only need be completed with respect to indirect compensation excluding eligible indirect compensation.

18 Must the service provider receiving “eligible indirect compensation” be the person who provides the disclosures needed to meet the alternative reporting option?

No. Any person can provide the required disclosures.

19 If more than one person provides the same required disclosure for eligible indirect compensation, must all persons providing the disclosure be identified?

No. Multiple persons can be listed on the Schedule C as providing different required disclosures, but if multiple persons provide the same disclosures, only one person must be listed for the disclosure or disclosures.

20 When identifying the person who provided the required disclosures for the Schedule C alternative reporting option, must the name of an individual be provided?

No. The person listed may be an individual or entity that actually furnished the disclosures to the plan. If a mutual fund prospectus is used to provide required disclosures for eligible indirect compensation, however, it would not be sufficient to identify the mutual fund as providing the prospectus unless the mutual fund itself provided the prospectus directly to the plan.

FAQs About The 2009 Form 5500 Schedule C (cont.)

21 Are insurance contract “wrap fees” considered “eligible indirect compensation” for purposes of the alternative reporting option on Schedule C?

Where the wrap fees are charged against the plan’s investment or are transaction-based fees for transactions or services involving the plan, they can be treated as “eligible indirect compensation.”

22 Some insurance companies provide a “net rate” investment product where an investment contract is combined with plan recordkeeping, trusteeship, and similar services. Instead of charging fees for those services, the insurer credits the plan’s investment in a stable value option with interest at a crediting rate that is “net” of the insurer’s expenses and costs determined based on the overall experience of the insurer’s general account. Is the portion of the insurance company’s expenses and costs used to reduce the crediting rate reportable indirect compensation even though it is calculated based on the overall experience of the general account? If so, can these amounts be treated as eligible indirect compensation?

The fact that expenses that constitute reportable compensation are netted against the crediting rate in determining the plan’s rate of return on the stable value contract would not be a basis for excluding those expenses as reportable compensation for Schedule C purposes. Further, the fact that the formula for the fees is based on overall operating costs of the insurance company would not affect that conclusion. Expenses “netted” in this fashion may be treated as fees charged against the plan’s investment and reflected in the value of the plan’s investment for purposes of the Schedule C alternative reporting option for eligible indirect compensation.

23 Is the spread earned by a broker on principal transactions involving the plan “eligible indirect compensation?”

No. For this purpose, the Department will follow the definition of commission used by the Securities and Exchange Commission under Section 28(e) of the Exchange Act as described in SEC Release No. 34-45194. Thus, securities commissions for Schedule C purposes would include a markup, markdown, commission equivalent, or other fee paid by a managed account to a dealer for executing a transaction where the fee and transaction price are fully and separately disclosed on the confirmation and the transaction is reported under conditions that provide independent and objective verification of the transaction price subject to self-regulatory organization oversight. Fees paid for eligible riskless principal transactions that are reported under NASD Rule 4632, 4642, or 6420 would fall within this interpretation.

24 May a plan administrator use a formula for reporting indirect compensation on the Schedule C that is required to be specifically reported on Line 2?

Yes. The preamble to the final amendments to regulations relating to the annual reporting requirements states that “[f]ilers generally have the option of reporting a formula used to calculate indirect compensation received instead of an actual dollar amount or estimate...” 72 Fed. Reg. 64710, 64712 (Nov. 16, 2007). It is permissible to use a formula for reporting indirect compensation even in cases where it may be possible for the service provider to calculate a monetary amount or estimate. The Department, therefore, would not expect service providers to be identified on the Schedule C as failing to provide information necessary to complete the Schedule C merely because they provided a formula when disclosing their indirect compensation to plan administrators, including for indirect compensation that is not “eligible indirect compensation.”

25 If a service provider discloses a formula used to determine its indirect compensation, is the plan administrator required to calculate or estimate dollar amounts from the formula for purposes of Schedule C reporting (to the extent that compensation described by a formula is not eligible indirect compensation)?

No. Element (g) on Line 2 of Part I of Schedule C requires the plan administrator to enter the “total of all indirect compensation that is not eligible indirect compensation” and Element (c) on Line 3 of Part I of Schedule C states that the plan administrator should “Enter amount of indirect compensation.” Where a plan administrator receives a formula from a service provider for amounts reportable on Line 2, the plan administrator may enter “0” if that is the only indirect compensation reportable in element (g) on Line 2. The plan administrator must check “yes” in element (h) of Line 2, and attach a statement describing the formula(s) that is labeled “Schedule C, Line 2(h) formula description.” Where a plan administrator receives a formula from a service provider for amounts reportable on Line 3, the plan administrator may enter “0” if that is the only indirect compensation reportable in element (c) on Line 3. The plan administrator must include in element (e) on Line 3, a description of the formula(s).

26 Plan administrators are not required to report on Schedule C information with respect to service providers receiving less than \$5000 in total compensation (direct and indirect) from the plan. Schedule C, Part I, Line 2 states that service providers should be reported in descending order of compensation. Are plan administrators

required to estimate a service provider's compensation for purposes of determining whether to include information about a service provider on Form 5500, or for purposes of reporting service providers in descending order of compensation on Part I, Line 2?

If a “key” service provider reports its compensation by a formula, the amount of indirect compensation is presumed to meet the \$5000 reporting threshold. Also, if any key service provider reports a formula for its indirect compensation (that is not eligible indirect compensation), information about that indirect compensation is reportable on Part I, Line 3 of Schedule C. Key service providers are those service providers for which Schedule C, Part I, Line 3 reporting is required (i.e., service providers who are fiduciaries, or who provide contract administrator, consulting, custodial, investment advisory, investment management, broker, or recordkeeping services).

In the case of service providers that are not key service providers, a plan administrator must either assume that the \$5000 reporting threshold is met if a service provider provides only a formula for its compensation or calculate an estimate from the formula to determine whether the \$5000 reporting threshold is met. Although the plan administrator is ultimately responsible for determining whether the \$5,000 reporting threshold is met, the plan administrator may rely for Schedule C reporting purposes on an estimate of compensation provided by a service provider in the absence of any information that should lead the administrator to question the estimate.

Plan administrators are not required to calculate estimates of service providers' total direct and indirect compensation merely for purposes of reporting service providers in descending order of compensation on Part I, Line 2. The plan administrator should list the most highly compensated service providers first to the extent the plan administrator has total actual or estimated compensation data. If total compensation data is not available, however, the plan administrator may list service providers in any reasonable order.

27 What guidelines apply where service providers elect to provide an “estimate” of compensation?

Service providers that provide an estimate of their indirect compensation may use any reasonable method for developing an estimate, as long as the method is disclosed with the estimate. Where more than one reasonable method is available for generating an estimate, it would be appropriate for the plan and the service provider to consider the relative costs involved in selecting a method.

28 If a service provider provided the plan administrator with an estimate of its indirect compensation or a formula used to calculate its indirect com-

pensation, but later determines a dollar amount for the compensation it received, does the plan administrator need to obtain an updated disclosure of the dollar amount in order to be able to rely on the Schedule C alternative reporting option?

No. A second disclosure with the actual dollar amount does not need to be obtained in order to rely on the alternative reporting option. It may be appropriate for the plan administrator in such circumstances to consider obtaining information about a dollar amount as part of monitoring the service arrangement, e.g., to verify the reliability of an estimate or to confirm that a formula was correctly applied.

29 Can a recordkeeper satisfy the alternative reporting option for eligible indirect compensation by furnishing the plan administrator with prospectuses, brokerage fee schedules, the SEC Form ADV, or other already available documents prepared and provided to the administrator for separate purposes, or must it create its own written disclosure document?

As long as the person who is identified on the Schedule C as providing the required disclosures for the eligible reporting option advises the plan administrator that disclosures in those documents are intended to satisfy the alternative reporting option in addition to serving the other purposes for which the documents were generated, provision of existing documents will satisfy the alternative reporting option if a reasonable plan administrator can readily determine from the documents: (a) the existence of the indirect compensation; (b) the services provided for the indirect compensation or the purpose for the payment of the indirect compensation; (c) the amount (or estimate) of the compensation or a description of the formula used to calculate or determine the compensation; and (d) the identity of the party or parties paying and receiving the compensation. Furnishing the plan administrator with a separate document that identifies the other already provided documents that contain the required information also would satisfy the eligible indirect compensation disclosure requirement provided the separate document includes references to pages or sections of the document that contain the required information.

30 For purposes of satisfying the “written disclosure” requirement for the alternative reporting option, is electronic disclosure such as e-mail or other web-based technology satisfactory?

Yes. Electronic disclosures can be used satisfy the “written disclosure” requirement for the alternative reporting option. There must be some record that affirmatively indicates that the “written materials” were received by the plan administrator, and those records must

FAQs About The 2009 Form 5500 Schedule C (cont.)

be retained in accordance with ERISA's recordkeeping requirements.

31 Do the disclosures regarding “eligible indirect compensation” need to be provided at least annually in order for the alternative reporting option to be available?

There is no specific requirement that the disclosures be provided annually. In order to take advantage of the alternative reporting option, however, the plan administrator must review the disclosures at least annually in connection with the preparation of the Form 5500 and confirm that the information continues to be correct. If any of the required information has changed, updated disclosures would be required to take advantage of the alternative reporting option. Also, the plan administrator must retain for the period required under section 107 of ERISA documentation sufficient to demonstrate the results of this review.

32 Will post-trade confirmation serve as adequate written disclosure of brokerage fees and commissions for purposes of the alternative reporting option?

Accurately reconciled post-trade confirmations may be relied upon to satisfy the written disclosure requirements for eligible indirect compensation if, either alone or in conjunction with other disclosures, the plan administrator receives the required information.

33 For Schedule C reporting purposes, where a service provider has received free attendance at a conference or seminar the constitutes reportable indirect compensation, is it adequate to report payments for meals, hotel, transportation costs, and other individual expenses? Must the plan administrator also report that portion of the expenses attributable to every conference attendee for costs such as guest speaker fees and other conference overhead?

Payments for meals, hotel, transportation costs, tickets to a sporting or entertainment event, and other individual expenses would be reportable indirect compensation. Waiver of any conference registration fee would also be reportable indirect compensation. Conference overhead expenses, such as guest speaker fees, conference space rental, continental breakfast and other refreshment expenses normally included in the cost of the conference registration fee, are not reportable indirect compensation for Schedule C reporting purposes.

34 If a plan is required to report non-monetary compensation received by a service provider because the amount involved exceeds the Schedule C exclusion for occasional non-

monetary compensation of insubstantial value, do gifts of less than \$10 need to be included?

Administrators are allowed to exclude non-monetary compensation of insubstantial value (such as gifts or meals of insubstantial value) which is tax deductible for federal income tax purposes by the person providing the gift or meal and would not be taxable income to the recipient. The gift or gratuity must be valued at less than \$50, and the aggregate value of gifts from one source in a calendar year must be valued at less than \$100. If the \$100 aggregate value limit is exceeded, then the value of all the gifts will be reportable compensation. The instructions state that, for this purpose, gifts of less than \$10 do not need to be counted toward the \$100 limit. Gifts of less than \$10 also do not need to be included in calculating the aggregate value of all gifts required to be reported if the \$100 limit is exceeded.

35 If a person providing services to the plan is provided a meal or other entertainment based on a general business relationship that includes both ERISA and non-ERISA business, is it required to be reported on the Schedule C?

It depends. The Schedule C instructions state that indirect compensation would not include compensation that would have been received had the service not been rendered to the plan or the transaction had not taken place with the plan and that cannot be reasonably allocated to the service(s) performed or transaction(s) with the plan. However, if a person's eligibility for receipt of a gift (such as meals, travel, or entertainment) is based, in whole or in part, on the value (e.g., assets under management, contract amounts, premiums) of contracts, policies or transactions (or classes thereof) placed with ERISA plans, the gift would constitute reportable indirect compensation for Schedule C purposes. Where the eligibility for or amount of the gift is based on an book of business, including ERISA plan business, a pro rata share of the value of the gift should be treated as indirect compensation for the ERISA plans involved.

A determination of whether non-monetary compensation is reportable indirect compensation is not necessary if the allocable dollar value of the gift is below the thresholds for Schedule C reporting on non-monetary compensation even if the service provider received other reportable compensation that is at or above the \$5,000 threshold. For example, a broker sends a holiday gift basket worth \$75 to an investment manager with which it has an established business relationship. Ninety percent of the business the broker has with the investment manager is non-ERISA plan business. A reasonable allocation method would be pro rata so the amount for any particular ERISA plan would be less than \$10 for Schedule C

reporting purposes and would not be required to be reported on any plan's Form 5500 as indirect compensation received by the investment manager.

36 If a person receives compensation that is reportable on Schedule A and compensation that is reportable on Schedule C, does the compensation that must be reported on Schedule A also be reported on Schedule C?

Compensation reported on Schedule A is not required to be reported again on Schedule C. The amount of the compensation that must be reported on Schedule A must, however, be taken into account in determining whether the Schedule C-only compensation plus the Schedule A compensation is \$5,000 or more and thus, required to be reported. For example, if a broker received \$4,000 in insurance commissions from an insurance company in connection with policies purchased by the plan and \$2,000 from the plan for providing consulting services to the plan, the plan's 5500 filing would include a Schedule A identifying the \$4,000 in commissions and a Schedule C entry for the broker reporting the \$2,000 for the consulting services provided to the plan.

37 If a plan sponsor pays a third-party service provider on the plan's behalf and seeks reimbursement from the plan, should the Schedule C reflect a direct payment from the plan to the service provider and not a payment to the employer?

Yes. When a plan sponsor pays a plan third-party service provider and then seeks reimbursement from the plan, the Schedule C for the plan should reflect a direct payment from the plan to the service provider. In this regard, direct compensation is defined in the instructions for purposes of Schedule C as "[p]ayments made directly by the plan for services rendered to the plan or because of a person's position with the plan" and excludes "[p]ayments made by the plan sponsor, which are not reimbursed by the plan." The Department notes that if the plan sponsor pays a service provider directly, and does not seek reimbursement from the plan, such payment does not need to be reported on the Schedule C.

38 Where a plan service provider is providing non-plan related investment services to participants, and charging reduced fees for plan related services based on the anticipation of receiving fees from participants for non-plan related services, do the fees for non-plan related investment services need to be reported on the Schedule C?

No. Fees for non-plan related investment services provided directly to participants that are not paid by the

plan, charged to a plan account, or reflected in the value of plan investments are not reportable compensation for Schedule C purposes. This should not be read as expressing any view on the application of ERISA's fiduciary responsibility or other provisions to such an arrangement.

39 Do both proprietary soft-dollar compensation (e.g., research prepared by the entity providing brokerage services) and non-proprietary soft dollar compensation (e.g., research prepared by independent/third parties) fall within the definition of "eligible indirect compensation?"

Yes. Both proprietary and non-proprietary soft dollar revenue can be treated as "eligible indirect compensation" for purposes of the alternative reporting option if the written disclosure requirements are also met.

40 Under what circumstances is a service provider expected to be identified on Schedule C for failing to provide information necessary to complete the Schedule C?

The Department recognizes that, in order to furnish their employee benefit plan clients information necessary to comply with the new Schedule C annual reporting requirements, certain service providers may have to modify their current recordkeeping and information management systems. The Department also recognizes that it may be difficult for some service providers to make those adjustments sufficiently in advance so that their systems will be fully operational when employee benefit plan clients start to make requests for, or otherwise need, Schedule C related data for filing their 2009 plan year Form 5500. In an effort to address the concerns of both service providers and plans, the Department has decided that, with respect to those employee benefit plans which are dependent on service providers for information necessary to complete the Schedule C, the plan administrator will not be required for 2009 plan year reports to list a service provider on line 4 of the Schedule C as failing to provide information necessary to complete the Schedule C if the plan administrator receives from the service provider a statement that (i) the service provider made a good faith effort to make any necessary recordkeeping and information system changes in a timely fashion, and (ii) despite such efforts, the service provider was unable to complete the changes for the 2009 plan year.

Supplemental FAQs About The 2009 Schedule C

1 What is the purpose of this FAQ guidance?

The Department of Labor is publishing these FAQs to supplement FAQs published in July 2008, and to provide further guidance in response to additional questions from plans and service providers on the requirements for reporting service provider fees and other compensation on the Schedule C of the 2009 Form 5500 Annual Return/Report of Employee Benefit Plan. Inquiries regarding these supplemental FAQs may be directed to EBSA's Office of Regulations and Interpretations at 202.693.8523.

2 Are promotional gifts of little intrinsic value such as a coffee mug, calendar, greeting cards, plaques, certificates, trophies or similar items intended solely for the purpose of presentation and displaying a company logo, reportable Schedule C indirect compensation to the recipient?

Generally, no. The Department explained in its July 2008 FAQ 34 that administrators are allowed to exclude from Schedule C non-monetary compensation of insubstantial value, which is tax deductible for federal income tax purposes by the person providing a gift or meal and that would not be taxable income to the recipient. The non-monetary gift or gratuity must be valued at less than \$50, and the aggregate value of gifts from one source in a calendar year must be valued at less than \$100. If the \$100 aggregate value limit is exceeded, then the value of all the gifts will be reportable compensation. The instructions state that, for this purpose, non-monetary gifts of less than \$10 do not need to be counted toward the \$100 limit. Non-monetary gifts of less than \$10 also do not need to be included in calculating the aggregate value of all gifts required to be reported even if the \$100 limit is otherwise exceeded.

In the Department's view, it is permissible to presume that ordinary promotional gifts, such as a coffee mug, calendar, greeting cards, plaques, certificates, trophies and similar items of insubstantial value that display a company logo of the person or entity providing the promotional gift have a value of less than \$10 for purposes of Schedule C reporting. On the other hand, this FAQ would not cover a gift that clearly has a value in excess of \$10, such as a \$400 golf club or an expensive luxury pen, for example, merely because it was embossed with a company logo.

This guidance is for purposes of Schedule C reporting only. Filers are strongly cautioned that gifts and gratuities of any amount paid to or received by plan fiduciaries may violate ERISA and give rise to civil liabilities and criminal penalties.

3 Are all free business meals and entertainment received by persons who have business relationships with ERISA plans indirect compensation to the recipient for purposes of Schedule C?

No. It is the view of the Department that a reasonable reading of the Schedule C instructions supports the conclusion that the value of meals, entertainment, and other gifts (other than cash or cash equivalents) is not reportable compensation for purposes of the Schedule C if neither the amount of the gift nor eligibility to receive the gift is based, in whole or in part, on the recipient's position with one or more ERISA plans, or the amount or value of services provided to or business conducted with one or more ERISA plans.

Thus, if a brokerage firm invites employees of investment managers to a business conference, including reimbursement for travel, meals, and lodging, where eligibility for the invitation or the value of gifts provided is not based, in whole or in part, on whether the investment manager does business with ERISA plans or on the value or amount of business conducted that includes ERISA covered plans, the expenses for the conference, travel, meals and lodging would not constitute Schedule C reportable indirect compensation received by the investment managers or their employees.

Similarly, if an investment platform provider hosts a hospitality suite, including food, other refreshments, and entertainment, at a business conference focused on ERISA issues and allows any person who attends the conference to visit the hospitality suite, the value of the food, refreshments, and entertainment would not be reportable Schedule C compensation to persons who visit the hospitality suite merely because they may hold a position with an ERISA plan or have service provider relationships with ERISA plans.

An exchange of holiday gifts that is based solely upon a personal relationship between persons that happen to do business with ERISA plans is not Schedule C reportable indirect compensation. The example in the Department's July 2008 FAQ 35 regarding a gift of a holiday basket was intended to illustrate the mechanics of allocating the value of a gift where eligibility for the gift was based on business done with multiple ERISA plans; it was not intended to indicate that in all circumstances gifts exchanged among persons who have business relationships with ERISA plans necessarily constitute indirect compensation to the recipient for purposes of Schedule C.

This guidance is for purposes of Schedule C reporting only. Filers are strongly cautioned that gifts and gratuities of any amount paid to or received by plan fiduciaries

may violate ERISA and give rise to civil liabilities and criminal penalties.

4 An entity that provides services to employee benefit plans conducts educational conferences designed to educate and explain employee benefit issues and products at no cost to employee pension or welfare plan personnel (e.g., plan sponsor's human resources staff and finance personnel). In holding the conference, the entity provides conference rooms, speakers, audio-visual equipment, and refreshments during conference breaks, meals, travel, and lodging. Do all of those expenses have to be reported as non-monetary compensation?

Paying for or reimbursing plan personnel for travel, meals, and lodging expenses associated with the plan representative's attendance at an educational conference generally constitutes reportable Schedule C compensation because it is provided due to the person's position with the plan. Waiver of any conference registration fee would also be reportable indirect compensation. The cost of the meals, travel, lodging, and waived conference registration fee must be included in the calculation of Schedule C reportable compensation for the recipients. An allocated share of the costs of the conference rooms and audio-visual equipment, however, does not need to be included.

The Department has decided that it will not require such educational conference expenses to be reported on Schedule C if a plan fiduciary other than the plan representative attending the conference reasonably determined, in advance and without regard to whether such conference expenses will be reimbursed, that (a) the plan's payment of educational expenses in the first instance would be prudent, (b) the payment or reimbursement of the expenses would be consistent with a written plan policy or provision designed to prevent abuse, (c) the conference had a reasonable relationship to the duties of the attending plan representative, and (d) the expenses for attendance were reasonable in light of the benefits afforded to the plan by such attendance and unlikely to compromise the plan representative's ability to carry out his or her duties in accordance with ERISA. The fiduciary's determination must be in writing.

This guidance is for purposes of Schedule C reporting only. Filers are strongly cautioned that gifts and gratuities of any amount paid to or received by plan fiduciaries may violate ERISA and give rise to civil liabilities and criminal penalties.

5 In the context of a plan's investment in a "look-through" investment fund is Schedule C report-

ing required for fees received by persons at the lower tier funds?

For Schedule C reporting purposes, fees received in connection with a plan's direct investment in a pooled investment fund ("top tier" fund) would be subject to Schedule C reporting to the extent the fees constitute reportable direct or indirect compensation.

If a top tier investment fund makes an investment in another investment fund ("lower tier" fund), fees received by persons at the lower tier fund level in connection with the top tier fund's investment in the lower tier fund would not be reportable compensation for Schedule C purposes. Compensation received directly or indirectly by persons at the top tier from the lower tier fund in connection with the investment of an ERISA plan or plans would, however, be subject to Schedule C reporting requirements.

This FAQ does not cover situations where the top tier fund is a separately managed investment account that contain assets of an individual plan, a master trust, or is merely a vehicle through which participants in participant-directed plans make investments in lower tier funds.

6 For purposes of reporting indirect compensation on Schedule C, must a limited partnership hedge fund that is not holding plan assets pursuant to the "less than 25% benefit plan investor exception" under section 3(42) of ERISA be treated as an investment fund?

Yes. The 2009 Form 5500 instructions provide that persons who provide investment management services to investment funds in which plans invest are treated for Schedule C reporting purposes as indirectly providing investment management services to those investing plans. Thus, fees that are paid out of an investment fund's assets to the fund's investment adviser (or its affiliates) for managing the fund's investment portfolio are reportable indirect compensation for Schedule C purposes. The instructions are clear that "investment funds" for this purpose include registered investment companies (commonly referred to as mutual funds) that do not hold plan assets by reason of ERISA section 401(b). The Department's July 2008 FAQs in explaining this requirement drew a line between "investment funds" and entities that would be treated as "operating companies" under the Department's plan asset regulation at 29 C.F.R. § 2510.3-101 (Definition of "plan assets" – plan investments). See 2008 FAQ 7. In the Department's view other investment funds that do not hold "plan assets" are similarly subject to the Schedule C compensation reporting requirements. Thus, for instance, fees paid to persons for management of a real estate hedge fund that did not meet the requirements

Supplemental FAQs About The 2009 Schedule C (cont.)

for being a real estate operating company under 29 C.F.R. § 2510.3-101 would be reportable Schedule C compensation, but property management fees paid to persons managing the underlying properties owned by the funds could be treated as ordinary operating expenses of the fund. See 2008 FAQ 4.

7 Can mutual fund 12b-1 fees, sub-transfer agent fees, and shareholder servicing fees received by a retirement plan record keeper be classified as eligible indirect compensation for purposes of the Schedule C alternative reporting option, regardless of whether such fees were received from a mutual fund agent or directly from a mutual fund?

The Department would generally consider fees disclosed in a mutual fund prospectus, such as 12b-1 fees, sub-transfer agent fees, and shareholder servicing fees, as charged against the mutual fund assets and reflected in the value of the investing plans' shares for purposes of Schedule C's definition of eligible indirect compensation. The fact that a 12b-1 fee, for example, is received by a record keeper through a conduit mutual fund agent would not prevent the fee from being treated as eligible indirect compensation. On the other hand, the fact that a revenue sharing fee received by a record keeper from a broker might ultimately have been derived from 12b-1 fees received by the broker and disclosed in a mutual prospectus does not mean that the revenue sharing payment would be eligible indirect compensation.

8 Revenue sharing payments often travel through the hands of several different service providers before getting to their ultimate intended recipient in a "chain" of plan service providers. Does only the ultimate recipient of the compensation need to be identified as having received the compensation?

Not necessarily. One purpose of the Schedule C reporting structure is to provide plan fiduciaries with better information regarding the flow of amounts that represent fees received in connection with services provided to the plan. Accordingly, it is possible that a person could receive a fee that would constitute indirect compensation and pass some of that fee on to another person for whom the amount passed on would also represent reportable indirect compensation. In such a case, the information reported regarding the first and second person who received the fee could include a description of the total fee received and the portion of the fee passed on to the next level recipient. Alternatively, it may be that the consolidated bundled fee reporting option could be used instead of reporting revenue sharing compensation received by individual members of the bundle.

On the other hand, if an intermediary fund agent is merely a conduit for transmission of the revenue sharing fee to the ultimate recipient, the conduit would not itself be receiving any reportable compensation by acting as the conduit.

9 Are costs and expenses incurred by an insurance company in connection with a general account investment contract that promises a guaranteed rate of return reportable compensation for purposes of the Schedule C?

The answer generally depends on whether plan services are included as part of the investment contract. FAQ 22 in the July 2008 guidance dealt with Schedule C reporting for a "stable value contract" that is "combined with plan recordkeeping, trusteeship, and similar services." In the FAQ, the insurer reduced the crediting rate on the contract to account for the insurer's expenses and costs for providing services, such as recordkeeping and similar services, to investing plans. The FAQ was intended to describe an insurance based situation where plan services were characterized as "free" because the compensation for those services was collected indirectly by, in effect, imposing a charge against the plan's investment. The Department concluded that Form 5500 reporting on the compensation for providing plan services could not be avoided in such cases merely by incorporating the compensation for those services into a reduction in the crediting rate on an insurance investment contract.

A different situation is presented if an insurance company general account investment contract is not combined with any plan services. An insurance company general account investment that promises a guaranteed rate of return takes into account various factors, including insurance company costs and expenses, in establishing the guaranteed crediting rate. Similar to the July 2008 FAQ on mutual fund operating expenses (see 2008 FAQ 4), such insurance company costs and expenses do not involve the insurer receiving reportable compensation for providing services, such as investment management services, for an investment fund portfolio in which the plan invests.

Payment of commissions and other compensation to agents, brokers and other persons in connection with the placement or retention of the insurance contract would, however, be reportable compensation to the recipients, regardless of how they are characterized. See 2008 FAQ 6. For example, fees and commissions would still be reportable, even if they were characterized as being within a "mortality and expense" charge used to establish the crediting rate. The instructions for the Schedule C provide that insurance fees and commis-

sions received by agents, brokers, and other persons in connection with a plan's purchase of or investment in an insurance contract that are reported on Schedule A do not need to be reported again on Schedule C.

10 The July 2008 guidance in FAQ 40 provides limited transition relief where a service provider makes reasonable, good faith efforts to develop systems to track information regarding its reportable indirect compensation in a timely fashion but, despite such efforts, is unable to collect the necessary information for the 2009 plan year reports. Will the Department reject the Form 5500 or impose penalties if the Schedule C does not include information that was not provided to the plan administrator or the plan's Form 5500 preparer by a service provider that gives the plan administrator the statement described in Q40?

No. In addition to the statement described in FAQ 40, the Department expects the service provider will provide the information on its reportable compensation that it was able to collect. The Department also expects that plan administrators who receive such statements from service providers will communicate with the service provider regarding the statement and the steps the service provider is taking to be able to provide the necessary information in connection with future Schedule Cs the plan is required to file.

11 Are "contingent deferred sales charges," market value adjustments for annuity contracts, or surrender/termination charges reportable compensation and if so, are they to be reported as direct or indirect compensation?

"Contingent deferred sales charges" are typically understood to be back-end or deferred sales loads or commissions investors pay when they redeem mutual fund shares or other investments. Although sales loads frequently are used to compensate outside brokers that distribute fund shares, some funds that do not use outside brokers still charge sales loads. To the extent paid by the plan or charged to a plan or participant's account, such sales loads or commissions would be direct compensation to the person receiving the load or commission. Such a deferred load or commission charged against an investment fund and reflected in the value of the plan's investment could be treated as eligible indirect compensation assuming the required disclosures are provided. The Department would apply similar treatments to exchange fees imposed on shareholders if they exchange (transfer) to another fund within the same fund group, account fees imposed on investors in connection with the maintenance of their accounts, and purchase fees imposed to defray some of the fund's

costs associated with a purchase of fund shares.

Market value adjustments or similar surrender or termination charges that are adjustments to the value of the investment in accordance with the contract would not be reportable compensation for Schedule C purposes where the market value adjustment or surrender charge reflects only the contractual difference in the value of the plan's investment because it was not held for the stated duration of the contract.

12 Some mutual funds have imposed short-term trading fees as a result of SEC Rule 22c-2. These are commonly known in the industry as "redemption fees." Other investment products (collective trust funds, separate accounts, etc.) may impose similar fees to curb short-term trading. Such fees are generally assessed when a participant transfers out of an investment fund within a certain timeframe (often 30-60 days) after investment in the fund. The fees flow back into the fund, trust, or account through a reporting and remittance process developed between the record keeper or intermediary and the fund or investment company. Should these fees be reported as redemption fees using code 57 on Schedule C as direct compensation to the fund company?

A redemption fee described in SEC Rule 22c-2 is a type of fee that some funds charge their shareholders when the shareholders redeem their shares. Although a redemption fee is deducted from redemption proceeds just like a deferred sales load, it is not considered to be a sales load. Unlike a sales load, such a redemption fee is used to defray fund costs associated with a shareholder's redemption and is paid directly to the investment fund. Such redemption fees paid directly to an investment fund are neither direct nor indirect compensation to a service provider reportable on Schedule C. On the other hand, a person could not avoid Schedule C reporting merely by labeling a fee a "redemption fee," for example, calling a deferred sales charge or back-end load a "redemption fee."

13 Record keepers may receive revenue sharing payments from fund companies in the form of shareholder servicing fees. In some cases, the plan and the record keeper may agree to an "ERISA fee recapture account" where the revenue sharing exceeds a fee level negotiated between the record keeper and the plan sponsor. How are the following two common approaches treated for Schedule C purposes?
a. All revenue sharing received by the record keeper, or the amount in excess of the fees

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needed by the record keeper to administer the plan, is deposited into a retirement plan trust account and used to pay administrative expenses of the plan. Amounts remaining in the account at the end of the plan year are generally allocated to participants in accordance with provisions in the plan document.

b. All revenue sharing is retained by the record keeper and applied as a credit to the plan or plan sponsor to pay for or offset expenses of administering the plan. Amounts in excess of the fees negotiated by the record keeper to administer the plan are available to pay plan administrative expenses as directed by the plan administrator.

This question describes fee recapture arrangements, sometimes called ERISA fee recapture accounts, ERISA accounts, or ERISA budget accounts, which are designed to help plans control costs by recapturing some revenue sharing dollars and allowing plans to use them to pay plan expenses. If, in the question above, revenue sharing compensation is paid into the plan's trust account and the record keeper is merely serving as a conduit between the fund company and the plan trust, then the excess amounts that flow directly through the record keeper from the fund company to the plan trust do not have to be reported as indirect compensation received by the record keeper for Schedule C purposes.

If the amount deposited into the plan's trust account by the record keeper is net of the record keeper's service fees, however, the amount the record keeper retains would be reportable indirect compensation for Schedule C purposes.

Amounts paid to persons out of the plan's ERISA fee recapture trust account for services rendered to the plan are considered direct compensation to the receiving service provider.

If the record keeper retains the revenue sharing income but reflects some or all of it on the record keeper's accounts as a credit to the plan (as opposed to depositing in the plan's trust account), payments by the record keeper to other persons for rendering services to the plan that reduce the plan's credit balance would be reportable indirect compensation to the persons receiving the payments.

Nothing in this answer should be read as expressing a view on when ERISA accounts and similar revenue sharing arrangements may present prohibited transaction issues under section 406 of ERISA.

- 14 Many recordkeeping service arrangements apply some portion of a shareholder servicing fee charged by an investment fund in which its client plans invest toward the payment of the record keeper's fees. In cases where such revenue sharing payments from the investment fund do not cover the full amount of the record keeper fee, an additional direct payment is made by the plan to the record keeper to cover the total recordkeeping fee. Under such circumstances, can part of the recordkeeping fee be reported as indirect compensation and part direct compensation for purposes of Schedule C reporting?**

Yes.

- 15 If plan service providers or plan administrators make a good faith attempt to classify their services and the fees they receive using the codes in the Schedule C instructions, will the Department reject Form 5500s in 2009 due to inadvertent misclassifications?**

No. A reasonable good faith effort to properly classify services and fees is required, but EBSA will not reject 2009 Form 5500s solely because the Department might have used a different service or fee code than did the service provider or plan administrator in a particular filing, provided that a reasonable good faith effort was made to select the proper codes.

- 16 Provider A has an "alliance" with Provider B. Provider B has developed a program to assist participants in fund selection. Provider A pays Provider B a flat fee of \$20,000 to have access to the Provider B program, regardless of whether any of Provider A's plan clients use it. Plan Z pays a direct fee to Provider A of \$5,000 that allows Plan Z participants to access Provider B's service. Provider A shares \$1,000 with Provider B.**

The \$5,000 paid by Plan Z to Provider A is reportable direct compensation to Provider A. If the access to the Provider B program by Client Z is described as part of the services that Client Z gets for its \$5,000 payment to Provider A, the \$1,000 Provider A pays to Provider B could be treated as part of a bundled arrangement and not separately treated as indirect compensation received by Provider B. Assuming Provider B does not receive any other direct or indirect compensation related to Plan Z, Provider B would not be required to be separately listed on Plan Z's Schedule C.

- 17 By what date must the disclosure materials necessary to satisfy the "written disclosures" requirement for treating indirect compensation**

as eligible indirect compensation be presented to the plan administrator?

The instructions to Schedule C do not specify the date by which the materials necessary to satisfy the written disclosure requirement must be provided to the plan administrator. Under ERISA section 103(a)(2), if some or all of the information necessary to enable the administrator to comply with the annual reporting requirements of Title I of ERISA is maintained by an insurance carrier that provides benefits under the plan or holds assets of the plan in a separate account, a bank or similar institution that holds assets of the plan in a common or collective trust or a separate trust or custodial account, or the plan sponsor, the insurer, bank, or sponsor must transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year. In other cases, the Department would expect that the written materials would have to be provided by whatever date is agreed upon with the administrator, or, if no such date has been established, the administrator would need to obtain the materials sufficiently in advance of the date the related Form 5500 is due or filed, whichever comes first, so as to enable the administrator to conclude that the conditions for using the alternative reporting option have been met and timely file a complete and correct Form 5500.

18 If it is difficult to ascertain the Employer Identification Number (EIN) for some service providers that are part of a group of affiliated companies, would it be sufficient to provide the EIN of a “parent” company?

The Department recognized in the Schedule C instructions that EINs may not always be available to plan administrators to use to identify service providers. The Schedule C thus allowed use of a service provider's address as an alternative to providing an EIN. If a service provider is part of an affiliated group of companies, use of a parent company EIN would also be acceptable. If an EIN is used to identify a service provider, the Department would expect the same EIN to be used consistently from year to year and on different schedules that identify the same service provider.

19 May reporting of fees and expenses for plans with assets invested in a Master Trust Investment Account (MTIA) be reported on the Form 5500 filing for the MTIA rather than the Form 5500 filing for each plan involved?

Yes, but in the case of a master trust for which more than one master trust investment account (MTIA) Form 5500 report is required to be filed, the fees and expenses would have to be allocated to the proper MTIA or MTIAs. Being able to report fees and expenses at the MTIA level rather than at the plan level does not

change any fiduciary or other obligation under ERISA to allocate the fees and expenses properly among the plans using the master trust as a vehicle for investing and reinvesting plan assets. Consistent with current practices, fees and expenses reported on the MTIA level are not to be reported again on the plan level.

20 If a trade confirm is sent to the plan or to the participant with each participant directed trade made through a 401(k) plan brokerage window, does that meet the requirements of the eligible indirect compensation rule that requires disclosure to the plan administrator?

Providing a participant rather than the plan administrator with a trade confirmation would not satisfy the eligible indirect compensation requirements relating to disclosure to the plan administrator.

21 If a broker identifies, for each plan with respect to which it receives 12b-1 fees, shareholder service fees, subtransfer agency fees charged against an investment fund and reflected in the value of the plan's investment, the name of each fund and range of payments it receives: (e.g. “from all these funds we get between 25 and 45 basis points and/or up to 15 dollars per position”) will that satisfy the disclosure requirements for the eligible indirect compensation alternative reporting option?

No. The required disclosures for eligible indirect compensation include an identification of the services provided for which the broker is receiving indirect compensation. It also would not be sufficient to provide a fee range as described in the question for multiple funds. If the compensation with respect to any given fund may fluctuate over a range that would be difficult to describe with more precision than a range of basis points, however, it would be permissible to set forth for each separate fund such a range to describe the formula used to determine the broker's indirect compensation.

22 If an investment advisor has a standard disclosure on soft dollar compensation that meets the requirements of the securities laws, but would not meet the requirements of the alternative reporting option for eligible indirect compensation because it does not provide estimates or descriptions of eligibility criteria or the names of the brokers paying the soft dollar compensation, do additional disclosures need to be provided?

If the disclosures that meet the securities laws requirements do not include the information necessary to meet the eligible indirect reporting option, additional disclosures would be required for a plan to take advan-

Supplemental FAQs About The 2009 Schedule C (cont.)

tage of the alternative reporting option for eligible indirect compensation. There is no specific form or method of disclosure required for disclosures to satisfy the alternative reporting option requirements, and the disclosures do not have to come from a particular party. Plans and plan service providers thus have substantial flexibility in establishing programs to provide the necessary disclosures.

23 Are group health plans and other welfare benefit plans that are required to file a Schedule C subject to the indirect compensation reporting requirements?

Yes. Group health plans and other welfare plans required to file a Schedule C are subject to the indirect compensation reporting rules.

24 In the health plan context, and specifically with regard to health care claims, what fees will be considered as charged on a per transaction basis?

A fee charged on a per claim basis would be considered charged on a transaction basis for Schedule C reporting purposes. Similarly, fees charged for each benefit eligibility inquiry and response, claim status request and response, and other similar fees could be treated as transaction-based fees for Schedule C reporting purposes.

25 Assume that a plan sponsor pays all direct expenses relating to the administration and funding of benefits of an unfunded, self-insured welfare plan, such as the third-party claims administration expenses under an employer-pay-all disability plan. No plan assets are used to pay any direct expenses, nor are plan assets used to reimburse the plan sponsor for the payment of direct expenses. Would revenue sharing payments among the plan's service providers be required to be reported on a Schedule C?

The instructions specifically provide that health and welfare plans that meet the conditions of the limited annual reporting exemption under 29 CFR 2520.104-44 or Technical Release 92-01 are not required to file a Schedule C. Where the plan is eligible for that limited exemption, the fact that there are revenue sharing payments among the plan's service providers would not mean that such a plan would be required to complete a Schedule C.

Frequently Asked Questions About EFAST2 All-Electronic Filing System

FAQs About EFAST2 All-Electronic Filing System

1 I heard that I will have to start filing the annual return/report (Form 5500 or Form 5500-SF) electronically. Can you tell me if that's true and when I would need to start?

All pension and welfare plans and DFEs that are required to submit an annual return/report under Title I of ERISA (Form 5500 or Form 5500-SF) must do so electronically for plan years beginning on or after January 1, 2009. Beginning January 2010 an all-electronic system called EFAST2 will receive those electronic annual returns/reports. Once the EFAST2 electronic system is on-line and ready to receive filings, you must file the Form 5500 or Form 5500-SF electronically through EFAST2 for plan/reporting year 2009 and for subsequent plan/reporting years. Prior year delinquent or amended Form 5500 annual return/reports generally must be filed electronically through EFAST2. See question 4.

The Form 5500-EZ cannot be submitted electronically. A "one-participant" plan (see the instructions for the Form 5500-SF) that is eligible to file Form 5500-EZ and is not required to file under Title I of ERISA may elect to file Form 5500-SF electronically with EFAST2 rather than filing a Form 5500-EZ on paper with the IRS. Such a "one-participant plan" that is not eligible to file Form 5500-SF must file Form 5500-EZ on paper with the IRS. For more information on filing the Form 5500-EZ, see the instructions for Form 5500-EZ, go to www.irs.gov, or call 1.877.829.5500.

2 How can I file my timely plan year 2008 annual return/report if it is due after January 1, 2010?

You have several options:

- A. You can electronically file a plan year 2008 annual return/report using EFAST2-approved third party software or IFILE beginning January 2010. EFAST2 is the new filing system.
- B. You can electronically file a plan year 2008 annual return/report using EFAST-approved third party software until June 30, 2010. EFAST is the current filing system.
- C. You can file a plan year 2008 annual return/report on paper through the current EFAST filing system, using EFAST-approved software or government-issued hand print forms, until October 15, 2010.

3 Short plan year 2009 annual returns/reports (Form 5500 or Form 5500-SF) may be due before EFAST2 can receive them in January 2010. How do I file these?

Short 2009 plan year filers whose due date to submit their 2009 filing is before January 1, 2010 will be given an automatic extension to electronically file their complete Form 5500 annual return/report within 90 days

after the 2009 filing system is available on the DOL web site. This special extension is being granted to encourage such filers to submit their 2009 returns/reports electronically under EFAST2. Filers who choose not to take advantage of the special extension must use plan year 2008 forms and instructions and submit their annual return/report on or before the due date for their filing under the current EFAST system (before EFAST2 and the 2009 Forms and instructions are available for filing in January 2010).

4 How can I submit a delinquent or amended Form 5500 return/report for years prior to 2009 once the EFAST2 system is available?

Beginning January 1, 2010, delinquent and amended filings of Title I plans must be submitted through EFAST2. Further guidance on the exact steps required to submit delinquent or amended Form 5500 returns/reports for years prior to 2009 will be provided later.

Filing Preparation Software

5 What is IFILE?

IFILE is the Form 5500 and Form 5500-SF annual return/report preparation and submission application that will be on DOL's web site www.efast.dol.gov.

6 Do I have to use IFILE?

No. IFILE is offered as an alternative to EFAST2-approved third party software.

7 How do I know what third party software is approved?

A list of EFAST2-approved third party software will be posted on www.efast.dol.gov. There will be two types of software certification in EFAST2: certification for software to prepare filings and certification for software to submit filings. Make sure the software you are using is approved for the function(s) you will need to have performed by the software (i.e., filing preparation and/or submission).

8 What are the benefits of using EFAST2-approved third party software instead of IFILE?

Historically, 90 percent of filers have used approved third-party software. Continuing to use approved third-party software will provide you with continuity in the switch to the new system, which should help minimize the possibility of technical issues.

IFILE can not be used to transmit batches of filings; it can only be used to transmit single filings. Many third party preparers benefit from transmitting batches of filings. Some EFAST2-approved third party software

may support transmission of batches of filings.

IFILE does not help you prepare an annual return/ report. Some EFAST2-approved third party software may integrate with your systems to automatically populate some of the information required.

IFILE does not contain filing assistance or integrated instructions. Some EFAST2-approved third party software may provide such value-added support.

IFILE does not allow more than one individual to edit a filing without exporting, downloading, importing, etc. (see question 20 and 30); whereas, some EFAST2-approved third party software may provide such file sharing functionality. With file sharing as part of the software, different people can work on a single filing in a coordinated and streamlined manner.

9 I currently use EFAST-approved software to prepare my Form 5500 and then print and mail the annual return/report to EFAST. What will I need to do differently for my plan year 2009 annual return/report?

You may be able to use the same type of third-party software that you have been using to prepare your Form 5500, but you need to ensure that the version you use is approved for the 2009 plan year by EFAST2. A list of EFAST2-approved third party software will be posted on www.efast.dol.gov.

Instead of printing and mailing the annual return/report to EFAST, the plan administrator must electronically sign it and then the electronically signed annual return/report must be submitted over the Internet to EFAST2. Your EFAST2-approved third party software will transmit the filing to the EFAST2 system and subsequently provide you with your filing status.

Registering For EFAST2 Credentials

10 When can I register for EFAST2 electronic credentials to sign a Form 5500 or Form 5500-SF?

Once EFAST2 is operational in January 2010 you can begin registering for electronic credentials through the EFAST2 web site www.efast.dol.gov.

11 When I register for electronic credentials through the EFAST2 web site, what are the different user types and what type(s) of user should I select?

There are five user types under EFAST2. You can check as many as apply to you. You may associate more than one user type under your registration if you will be performing multiple functions:

Filing Author: Filing Authors can complete Form

5500/5500-SF and the accompanying schedules, submit the filing, and check filing status. Filing Authors cannot sign filings unless they also have the “Filing Signer” role. If you are using EFAST2-approved third party software to author your filing rather than IFILE, you do not need to check this box.

Filing Signer: Filing Signers can sign Form 5500/5500-SF filings. Signers must ensure that the filing information is correct prior to its submission. The signer’s signature indicates that to the best of the signer’s knowledge and belief the filing is true, correct, and complete. Signers include Plan Administrators, Employers/Plan Sponsors, and Direct Filing Entities. No other filing-related work may be done by the Filing Signer if this is the only user type selected. Further, for purposes of Title I of ERISA, the plan administrator (either as the Filing Signer or, if a non-individual entity, on whose behalf an individual authorized to sign on behalf of the plan administrator has signed as a Filing Signer) remains legally responsible for the timeliness of the submission of the Form 5500/5500-SF by a Transmitter.

Schedule Author: Schedule Authors can complete one or more of the schedules that accompany Form 5500/5500-SF. Schedules created by a Schedule Author are not associated with a filing. For a schedule created by a Schedule Author to be used in a filing, the schedule must be exported. This exported file will then be imported by the Filing Author to the correct filing. Schedule Authors cannot initiate, sign, or submit a filing. If the Filing Author is using EFAST2-approved third party software to author your filing rather than IFILE, then you do not need to check this box.

Transmitter: Transmitters can transmit Form 5500/5500-SF filings to the EFAST2 system for processing on behalf of others. Transmitters are responsible for the security of all filing information prior to and during its transmission. A Transmitter can be a company, trade, business, or individual.

Third-Party Software Developer: Third-Party Software Developers make Form 5500 filing preparation or transmission software for use in the EFAST2 system. They submit test cases using their software to the Participant Acceptance Testing System (PATS) Team. The PATS Certification Team will then review their submissions and provide feedback or approve and certify the software. A Third-Party Software Developer can be a company, trade, business, or individual.

12 If I am completing a Form 5500 or Form 5500-SF using an EFAST2-approved third party software program, will I need to register for EFAST2 electronic credentials?

You do not need to register for EFAST2 electronic credentials just to complete the annual return/report using third party software. If you will be submitting the filing to EFAST2, however, you will need to register for credentials

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as a “Transmitter” user type. If you will be signing the filing, you will need to register for credentials as the “Filing Signer” user type.

13 When registering for EFAST2 credentials, what’s the difference between a Filing Author and a Transmitter?

A Filing Author is the person who initiates (including filling out) the Form 5500 or Form 5500-SF and the schedules and attachments on IFILE. A Transmitter is the person or organization who actually submits the completed annual return/report to EFAST2.

14 What do I need to do to serve as a third party software provider under EFAST2?

You will need to get Third-Party Software Developer credentials (see question 11). There are two separate credentials for third party software: (1) for filing preparation software; and (2) for filing transmission software.

If you are developing software that will be used to prepare annual return/report filings, you will need to seek certification for filing preparation software. The certification for filing preparation software checks that the XML files designed to populate the annual return/report and schedules are correctly assembled and formatted.

If you are developing software that will be used to transmit filings, you will need to seek certification for filing transmission software. The certification for filing transmission software checks that the web requests using the third party software can be correctly sent by transmitters to EFAST2 and received from EFAST2 by the transmitter.

Initial third party software developer specifications have been provided to prospective developers. If you have not received these and are interested in being an EFAST2-approved third party software developer, please call 1.866.GO-EFAST.

15 I already have a PIN and ID for electronic filing in EFAST. Can I use that for submitting my filing electronically in EFAST2?

No. EFAST2 is a completely separate system from EFAST. You will need to register for and obtain new electronic credentials under EFAST2.

16 How can I update my email address or other contact information after I’ve registered?

After successfully logging into the EFAST2 web site, click on the “Profile” link in the navigation bar and you will be able to change any of your contact information, including email address.

Completing An Annual Return/Report (Form 5500 or Form 5500-SF)

17 I am filing a Form 5500-SF for a plan covered by Title I of ERISA and the plan invested in a direct filing entity. I don’t see a way to complete a Schedule D for a Form 5500-SF. Do I have to attach a Schedule D?

The only schedules required to be filed with the Form 5500-SF for a plan that is covered by Title I are the Schedule SB (actuarial information) for defined benefit pension plans or Schedule MB (actuarial information) for money purchase plans that are amortizing funding waivers. No other schedule should be submitted with the Form 5500-SF.

If you are filing the Form 5500, you must submit all required schedules and attachments, including the Schedule D, if applicable.

18 I don’t see a way to complete a Schedule SSA in EFAST2. How do I file my SSA information with the Government?

Beginning with the 2009 plan year, the Form 5500 series does not include the Schedule SSA. Do not find a prior year Schedule SSA, fill it out and attach that to your 2009 Form 5500 filing! Do not try to create your own Schedule SSA and attach that to your Form 5500 filing! SSA information will be collected by the IRS.

If you include a social security number on your annual return/report (such as appears on the old Schedule SSA) or in any of the attachments (including PDF or other forms of attachments), your filing may be rejected. Because your filing, including any attachments, will be posted on the Internet, it must not contain any Schedule SSA information or social security numbers.

For more information on the form that replaces the Schedule SSA, please contact the IRS (www.irs.gov).

19 How can I see what my annual return/report will look like before it is filed?

Using your filing preparation software, you can view your annual return/report as it would appear populated in a form facsimile. In IFILE, you can click the “View as PDF” button to see your annual return/report in a facsimile format. If you are using EFAST2-approved third party software, check your user manual for instructions on how to view your annual return/report in a facsimile format.

20 Can I show my annual return/report to other people for review before I submit it to the Government?

If you have a draft annual return/report (Form 5500 or Form 5500-SF) that you wish for other people to review, you can export the draft annual return/report. When you do that, you will have an XML file that you can send to other individuals. Those individuals can import the XML file into their EFAST2-approved third party software or into IFILE to review. If they wish to make changes to the draft annual return/report, they can do so, but they need to export the revised annual return/report into an XML file and send that back to you for the changes to be included in the transmission to EFAST2.

21 Is there a way I can check to see if there are errors in my filing before I submit it?

Yes. You can (and should) “validate” your filing before submitting it. The automatic validation will perform an initial check for errors, such as if Schedule H numbers are not consistent within Schedule H or with the Form 5500. This is a check of errors in your filing before you submit it to the Government. If the errors/warnings are not corrected before submission, the Government will be alerted to the errors associated with your filing when it is submitted. Please run the pre-validation check and correct any errors/warnings to the best of your ability before you submit your filing.

After a filing is submitted to EFAST2, the Government may perform additional checks of the annual return/report, and your filing may be rejected based on these additional checks.

22 Can a draft Form 5500 be “submitted” for viewing online and reviewing?

Please do not submit a draft annual return/report to EFAST2. When you “submit” an annual return/report, you are sending it to the Government. Do not submit a draft annual return/report to EFAST2 simply because you or your client wish to see what the filing will look like after it is filed. If you wish to view a completed annual return/report in IFILE, see the IFILE Users’ Guide. Also, see questions 20 and 21 for additional information on reviewing and checking your file before submission.

23 If the answer to a question seeking an amount is none, or zero, should I fill the numeric fields with zero or leave it blank?

If the numeric answer to the question is zero, or if the question provides that you cannot leave it blank, then enter “0”. Only leave a numeric field blank where the instructions specifically permit you to do so.

If you leave an item blank that should be zero and then validate your annual return/report for errors, you will be notified that item must be completed. Conversely, if you enter zero in an item that should have been blank and then validate your annual return/report for errors, you may receive different error messages. Consult the Form 5500 or

5500-SF instructions for guidance specific to each question on the forms.

Attachments

24 How do I attach the report of the independent qualified public accountant (IQPA report)?

The IQPA report needs to be documented on letterhead, signed, and then saved as a single Portable Document Format (PDF) file. That PDF file then needs to be attached to the Form 5500 annual return/report. When you submit the Form 5500 annual return/report, the attachments will be transmitted to EFAST2 along with the rest of the information in the annual return/report.

25 Will the EFAST2 system still receive my filing if I do not attach the IQPA report with my Form 5500 annual return/report when it is required?

The EFAST2 system will receive your filing, but submitting the annual return/report without the required IQPA report is an incomplete filing, and the incomplete filing may be subject to further review, correspondence, rejection, and assessment of civil penalties. Also, if you do not submit the required IQPA report, you must still correctly answer the IQPA questions on Schedule H, line 3. This means you must leave lines 3a and 3b blank because the IQPA report is not attached and must also leave line 3d blank because the reason the IQPA reports is not attached (i.e., is was not completed on time) is not a reason listed in any of the available check boxes. You should still complete line 3c if you can identify the plan’s IQPA. Please note that failing to include the required IQPA report and leaving parts of line 3 blank, however, will result in the system status indicating that there is an error with your filing because, as noted above, submitting your annual return/report without a required IQPA report is an incomplete filing, and the incomplete filing may be subject to further review, correspondence, rejection, and assessment of civil penalties. Thus, if you find it necessary to file a Form 5500 without the required IQPA report, you must correct that error as soon as possible.

26 If I am filing for an extension of time based on a request for an extension submitted on Form 5558 with the Internal Revenue Service, do I need to attach a copy of the Form 5558 to my Form 5500 or Form 5500-SF?

You do not need to attach a copy of the Form 5558 that was filed with the Internal Revenue Service to the annual return/report in EFAST2. You must, however, keep a copy of the Form 5558 that was filed with the Internal Revenue Service with the plan’s records.

27 What file format do I need to use for attachments to my filing to make sure they get transmitted to

FAQs About EFAST2 All-Electronic Filing System

and received by EFAST2?

The IQPA report, image of the signed Schedule MB, and image of the signed Schedule SB must be submitted in Portable Document Format (PDF). All other attachments can be submitted in either PDF or plain text format (TXT).

28 How do I turn an attachment into a PDF file?

Using software that will create a PDF file from another software application's data file often provides the best quality PDF and small file size. There are many software options for creating PDFs by "saving as" a PDF file or "printing" to a PDF file rather than a printer. When you are creating a PDF file using such software, you often must have the application that created the original file installed on your computer. You can also create a PDF file by using other free and paid software programs that you may already be using on your personal computer, regardless of your operating system.

29 Can I turn a paper document into a PDF file?

Scanners generally come with software that includes an option to save a scanned document as a PDF. Look for menu items such as "output type" or "settings" to select PDF as the output file type. Consult your scanner's user manual for specific instructions.

When creating a PDF file by scanning a paper document, you need to be careful that the resulting file size is not too large. There is a limitation on the size of submissions sent to EFAST2. Scanning your document at 300x300 resolution and using True Gray, Grayscale, or Black and White color depth can help to minimize the resulting file size of the PDF.

If you are scanning multiple pages and your scanner does not have a document feeder, you will need to scan each page and then combine them into one PDF file for each attachment type. Check that your pages appear in the order you want them prior to saving and submitting them.

You are encouraged to use software that will create a PDF from another application's data file, as this often produces a better quality PDF file and small file size, as described in the previous question.

Signing A Return/Report

30 If I am using EFAST2-approved third party software to prepare a filing for a client, how do I provide the plan sponsor/administrator signature (PIN) in the submission?

There are a few alternatives:

A. Your EFAST2-approved third party software may have a file sharing function (see question 8) that allows a plan sponsor to view and apply their signature to the filing. Check with your software vendor or user's manual to see if the software vendor offers this function.

B. You can use IFILE as a medium to share the filing with the plan administrator/plan sponsor. How you do that depends on whether you want to submit the filing or whether the plan administrator/plan sponsor wants to submit the filing. It also depends on whether the plan administrator/plan sponsor wants the ability to make changes to the annual return/report before submission. The person who will submit the filing needs to import it into IFILE as explained below.

1. If you expect to submit the filing, you would need to export the annual return/report from your EFAST2-approved third party software to an XML file. You can import the XML file into IFILE. After the file is imported into IFILE, you would need to specify the plan administrator/plan sponsor as the signer by entering the plan administrator/plan sponsor's email address. If the plan administrator/plan sponsor had not yet registered in EFAST2 as a Filing Signer, you will be alerted at this time. The plan administrator/plan sponsor would login to IFILE using their EFAST2 electronic credentials. The plan administrator/plan sponsor would not be able to edit the filing but would be able to view and sign the filing. Once the filing is signed, you could then submit it. The Filing Signer, however, retains legal responsibility for the timeliness of the submission, as well as for its accuracy and completeness.

2. If the plan administrator/plan sponsor wants to submit the filing, you would need to export the annual return/report from your EFAST2-approved third party software to get an XML file that you would send to the plan administrator/plan sponsor. The plan administrator/plan sponsor would need to have already registered in EFAST2 as a Filing Author and as a Filing Signer. The plan administrator/plan sponsor can login to IFILE and import the XML file generated by the third party software into IFILE. The plan administrator/plan sponsor can then review and edit the annual return/report in IFILE. Then the plan administrator/plan sponsor would identify himself when registering as the Filing Signer. Once the plan administrator/plan sponsor signs the filing, he or she could then submit it.

If an annual return/report is signed and then exported

or edited, the signatures are erased. If you export or edit it after it was signed, the plan sponsor or plan administrator will need to sign it again before the annual return/report is submitted. This applies whether you are using IFILE or EFAST2-approved third party software.

31 Do you need a separate registration for the “Employer/Plan Sponsor” and for the “Plan Administrator” (two separate signature lines) if the Employer/Plan Sponsor and the Plan Administrator are the same person?

No, you only need to register one time for both purposes. The credentials that you get can be used for multiple years and on multiple filings.

If the same person serves as both the Plan Sponsor and Plan Administrator, that person only needs to sign as the Plan Administrator on the Plan Administrator line.

32 I am a third party preparer that represents small businesses that do not have their own computers. Can I register for Filing Signer credentials on their behalf?

No. The EFAST2 process for obtaining Filing Signer credentials is designed so that the person signing electronically must be the person registering for the credentials. Access to any computer with an Internet connection is all that is required to register. Thus, your client may come to your office, use a personal computer at home, or go to a public library or copying center with a computer, and register for credentials using free email accounts or an email account provided by your company (e.g., tpaform.com).

33 Do actuaries or accountants need to register for EFAST2 electronic filing signer credentials?

No. EFAST2 does not require EFAST2-issued electronic signature credentials for anything other than for filing and submitting the Form 5500 and Form 5500-SF.

However, the Schedule MB and Schedule SB, if required, must be completed, printed, and signed by the actuary. An electronic image of the signed Schedule MB or Schedule SB with the actuary’s signature must be attached to the annual return/report.

The information from the actuary’s Schedule MB or Schedule SB must also be entered into the appropriate location of the electronic Form 5500 or Form 5500-SF (including the Schedule SB or Schedules MB) being submitted. When entering the information, whether using EFAST2-approved third party software or EFAST2’s web-based filing system, all the fields required for the type of plan must be completed (see instructions for fields that need to be completed).

The accountant must complete and sign their audit report on company letterhead. An electronic image of the signed accountant’s opinion must be attached to the annual return/report.

The actuary and accountant electronic signature images are not EFAST2-issued electronic signature credentials and do not require registration for Filing Signer credentials.

Submitting An Annual Return/Report (Form 5500 or Form 5500-SF) And Checking Its Status

34 Can a third party preparer submit an annual return/report for the sponsor electronically under EFAST2?

Yes. A third party preparer can submit an annual return/report that a plan sponsor/administrator has already signed electronically. The plan sponsor/administrator, however, retains legal responsibility for the timeliness of the submission, as well as for its accuracy and completeness. See question 30, above, regarding signing an annual return/report.

35 I tried submitting a Form 5500 annual return/report and I received an Acknowledgement ID. Does this mean my annual return/report was received?

An Acknowledgement ID means EFAST2 received an electronic “envelope” but it does not necessarily mean EFAST2 received the “filing” (i.e., the Form 5500 or Form 5500-SF, including all required schedules and attachments) inside the envelope. You need to check the filing status to ensure EFAST2 received your filing.

36 How do I check to see if a filing was received by EFAST2?

The individual who transmitted the annual return/report to EFAST2 or the signer(s) of that return/report can check the filing status, using the software used to submit the annual return/report, approximately 20 minutes after submission.

The transmitter and filing signer also can check the status of the returns/reports they submitted or signed through the EFAST2 web site regardless of what software (IFILE or EFAST2-approved) was used to submit the filings.

Any person (not just the transmitter or signer) can check the status of a filing by calling the EFAST2 Help Line at 1.866.GO-EFAST (1.866.463.3278) and using our automated voice system. The automated system will provide you with the status of the filing but will not describe any errors specific to the filing.

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37 How does the filing status tell me if an annual return/report is considered “filed” in EFAST2?

If the filing status states “Filing_Received,” “Filing_Error,” or “Filing_Stopped,” then the annual return/report is considered received. However, filings

with a status of “Filing_Error” or “Filing_Stopped” must be corrected through an amended filing. On the following page is a chart summarizing the submission and filing statuses and what they mean:

Status	What It Means	Return/Report Considered A Filing?
Unprocessable Submission	EFAST2 was not able to process the submission or “envelope” a transmitter sent. There may be multiple returns/reports in a single submission. EFAST2 could not read or process any of the annual returns/reports in this submission. All returns/reports in this submission are considered not received by the Government.	No - This submission must be corrected and re-submitted.
Processable Submission	EFAST2 was able to process the submission or “envelope” a transmitter sent. There may be multiple annual returns/reports in a single submission. EFAST2 will next need to try to read and process each of the annual returns/ reports in this submission.	No - The annual return/report(s) may not have been processed.
Processing	EFAST2 is currently trying to read and process each of the annual return/report in the submission. Annual returns/reports should not remain in this status for more than 20 minutes.	No - The annual return/report has not yet been processed. Please check the filing status at a later time to determine the annual return/report’s processing outcome.
Filing Unprocessable	EFAST2 could not read this annual return/report. This annual return/report is not considered filed with the Government.	No - This annual return/report must be corrected and resubmitted.
Filing Stopped	EFAST2 could read this annual return/report but could not fully check the filing for errors because crucial information was not provided by the filer. This annual return/report must be corrected and resubmitted in its entirety as an amended filing.	Yes
Filing Error	EFAST2 discovered errors in the annual return/report information provided by the filer. This annual return/report must be corrected and resubmitted in its entirety as an amended filing.	Yes
Filing Received	EFAST2 either found no errors or only identified possible errors in the annual return/report information provided by the filer. If corrections are warranted, they should be made and the corrected filing resubmitted in its entirety as an amended filing.	Yes

By looking closer at the Filing Status, you can see specific error messages applicable to the transmitted filing.

38 How do I submit an amended annual return/report (Form 5500 or Form 5500-SF) for Plan Years 2009 and later in EFAST2?

For plan years 2009 and later, starting with the original version you submitted, make the necessary amendments, check the box for “amended return/report” in Part I, and resubmit the entire annual return/report, including all needed schedules and attachments.

39 I am amending my Form 5500 (or Form 5500-SF) filing. Can I just submit the portion of the return/report which I am amending?

No. You will need to resubmit the entire Form 5500 (or Form 5500-SF), with all required schedules and attachments, through EFAST2. You cannot submit just the parts of the filing that are being amended.

40 I need to submit an amended return for a Form 5500 that was previously submitted on paper to EFAST. How do I file an amended return/report under EFAST2?

You would have to submit an entire Form 5500, including any schedules and attachments, electronically through EFAST2. See question 4.

Online Disclosure

41 Will the general public be able to view all Form 5500 and Form 5500-SF filings online?

Nearly all filings submitted through EFAST2, including schedules and attachments, will be available to the general public through the DOL web site www.efast.dol.gov. You do not need to register for electronic credentials or login to the EFAST2 web site to access the EFAST2 public disclosure web site.

There are some filings that will not be disclosed on the web site. For example, if EFAST2 recognizes that a filer amended their filing, only the most recent (the amended) filing would be displayed on the web site. The original filing would not be displayed.

Filings that are not shown on the EFAST2 web site will be available through the public disclosure room. Filings that were submitted through the current EFAST system will not be disclosed on the EFAST2 web site, but will continue to be available through the public disclosure system.

42 How soon would EFAST2 filings become available to the public?

The EFAST2 web site generally will be able to display submitted filings within one day of receipt. The public disclosure room will have filings in approximately that same amount of time.

Troubleshooting Problems With EFAST2

43 What should I do if the file size is “huge”?

EFAST2 should accept any submissions up to 2GB in file size. It is possible that a filer would not be able to transmit a submission under the EFAST2 limit of 2GB due to issues on their end of the network or due to their Internet Service Provider.

Submissions may include a batch of up to 100 filings. If a batch submission is over 2GB, the transmitter should break up the batch so that there are fewer filings in each batch submission.

Based on the amount of data required to be submitted, a single filing should not exceed the 2GB size limit, even if the filing has multiple attachments. If a filing is bigger than 16MB, it is likely because the PDF attachments were scanned with too high of a resolution or color depth. Filers need to be aware of this when creating their attachments as PDF. See question 28 and 29 for ways to minimize file size when creating a PDF document.

In the rare event a filing is over 2GB and you cannot reduce the file size of the attachments, please call the EFAST2 Help Line at 1.866.GO-EFAST (1.866.463.3278) and they will work with you to get the filing transmitted.

44 Could pop-up blockers stop the display of acknowledgement or any other messages that might be provided through the filing process?

Yes. Please consider turning off pop-up blockers in your web browser when using the EFAST2 web site.

45 Who can we contact about Form 5500 filing or EFAST2 if we have questions or problems?

Please begin by calling the EFAST2 Help Line at 1.866.GO-EFAST (1.866.463.3278).



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